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Attorneys for Defendants

ESIS, INC., ACE AMERICAN INSURANCE
COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MARIA ABRAHIM,

Plaintiff,

v.

ESIS, INC., ACE AMERICAN
INSURANCE COMPANY,,

Defendants.

Case No. C07-4014 JCS

**DECLARATION OF MARLENE S.
MURACO IN SUPPORT OF DEFENDANT
ESIS, INC. AND ACE AMERICAN
INSURANCE COMPANY'S REPLY TO
PLAINTIFF'S OPPOSITION TO MOTION
TO COMPEL ARBITRATION**

Date: February 1, 2008

Time: 9:30 a.m.

Judge: Judge Joseph Spero

Dept: Courtroom A, 15th Floor

I, MARLENE MURACO, hereby declare and state as follows:

1. I am an attorney licensed to practice law before the courts of the State of California. I am a shareholder at the law firm of Littler Mendelson, A Professional Corporation, and am counsel of record for Defendants ESIS, Inc. and Ace American Insurance Company (hereafter "Defendants") in the above-referenced matter. I have personal knowledge of the facts set forth herein and, if called as a witness, could competently testify thereto.

2. Plaintiff's counsel, Constantin Roboostoff, has asserted that the Declaration of Denise Carson filed by Defendants in support of their motion to compel arbitration should be

(CASE NO. C07-4014 JCS)

**DEC OF MARLENE MURACO ISO REPLY TO
PLTF'S OPP TO MOTION TO COMPEL ARB.**

1 disregarded by the Court because Defendants failed to provide Plaintiff with their Rule 26 Initial
2 Disclosures. As set forth below, my failure to provide Mr. Robostoff with Defendants' initial
3 disclosures was not intentional.

4 3. I did receive an e-mail from Mr. Robostoff on November 26, 2007 asking
5 when he would be receiving Defendants' initial disclosures. I drafted a responsive e-mail to Mr.
6 Robostoff that night which apologized for the delay and attached Defendants' Initial Disclosures.
7 Until earlier this week, I believed that I had successfully sent that e-mail (and the disclosures) to Mr.
8 Robostoff.

9 4. When I read Plaintiffs' opposition to Defendants' motion to compel
10 arbitration, I attempted to locate and resend the November 26 e-mail I had sent to Mr. Robostoff.
11 However, I could not find the e-mail in my "Sent" folder in Outlook. After searching, I did locate
12 the e-mail in my "Drafts" folder. It thus appears that I did not, in fact, succeed in sending Mr.
13 Robostoff Defendants' initial disclosures on November 26. A true and correct copy of the e-mail I
14 located in my "Drafts" folder is attached hereto as Exhibit A.

15 5. I am not sure how this error occurred. However, upon discovering it, I sent an
16 e-mail to Mr. Robostoff explaining what had happened and attaching Defendants' initial
17 disclosures. A copy of that e-mail, which does appear in my "Sent" items folder, is attached hereto
18 as Exhibit B.

19 6. I sincerely apologize to both the Court and Mr. Robostoff for my error. I do
20 not, however, believe that Plaintiff was in any way prejudiced by it. I did not produce any
21 documents in connection with Defendants' initial disclosures – choosing instead to describe the
22 categories of responsive documents that exist. Thus, Plaintiff was not deprived of any documents.
23 Furthermore, counsel for Defendant ACE sent Mr. Robostoff a copy of the ACE Employee Guide
24 Receipt and Agreement signed by Plaintiff as well as a copy of the ACE Arbitration Policy prior to
25 the date Plaintiff's lawsuit was filed.

26 7. The only piece of relevant information Mr. Robostoff would have gleaned
27 from Defendants' initial disclosures was that Denise Carson had knowledge regarding the
28 circumstances surrounding the implementation of ACE's and CIGNA's arbitration policies.

1 However, Mr. Roboostoff has not indicated how his having that information before Defendants filed
2 their motion to compel arbitration could have influenced the outcome of Defendants' motion. In
3 fact, the parties' original plan (as reflected in their Joint Case Management Conference Statement)
4 was that initial disclosures would be exchanged on the *same day* that Defendants filed their motion
5 to compel arbitration. At that point in time, Mr. Roboostoff obviously believed that he had no need
6 for Defendants' initial disclosures prior to the filing of Defendants' petition to compel arbitration.

7 I declare under penalty of perjury under the laws of the United States that the
8 foregoing is true and correct and that this Declaration was executed on January 11, 2008, at San
9 Jose, California.

10
11 
12 MARLENE S. MURACO

EXHIBIT A

**To The Declaration of Marlene S.
Muraco In Support of Defendant
ESIS, Inc. and ACE American
Insurance Company's Reply to
Plaintiff's Opposition to Motion to
Compel Arbitration**

Muraco, Marlene S.

To: Constantin Roboostoff
Subject: RE: Abraham v. ESIS, et al
Attachments: Abraham - Initial Disclosures.pdf

Hi Constantin,

I apologize for the delay. I was waiting for some information from my client and then got sidetracked by the holiday. Defendants' initial disclosures are attached.

Regards,

Marlene

From: Constantin Roboostoff [mailto:cvr1@earthlink.net]
Sent: Monday, November 26, 2007 2:54 PM
To: Muraco, Marlene S.
Subject: Abraham v. ESIS, et al

Marlene,

When can I expect to receive defendants' initial disclosures? The Case Management And Pretrial Order states that the parties shall exchange initial disclosures by November 16, 2007.

Thanks,
Constantin

EXHIBIT B

**To The Declaration of Marlene S.
Muraco In Support of Defendant
ESIS, Inc. and ACE American
Insurance Company's Reply to
Plaintiff's Opposition to Motion to
Compel Arbitration**

Muraco, Marlene S.

From: Muraco, Marlene S.
Sent: Tuesday, January 08, 2008 9:49 AM
To: Constantin Robostoff
Subject: RE: Abraham v. ESIS, et al
Attachments: Abraham - Initial Disclosures.pdf

Constantin,

I was in Tahoe last week without the ability to access the Internet on my computer and so just had an opportunity to read your opposition to Defendants' petition to compel arbitration. I believed I had e-mailed Defendants' Initial Disclosures to you the night of November 26th but when I went to re-forward the e-mail to you, there was no record of it in my Sent Items folder. After searching, I found this e-mail in my Drafts folder -- I am not sure how that happened but sincerely apologize for the error.

Regards,

Marlene

Hi Constantin,

I apologize for the delay. I was waiting for some information from my client and then got sidetracked by the holiday. Defendants' initial disclosures are attached.

Regards,

Marlene

From: Constantin Robostoff [mailto:cvr1@earthlink.net]
Sent: Mon 11/26/2007 2:53 PM
To: Muraco, Marlene S.
Subject: Abraham v. ESIS, et al

Marlene,

When can I expect to receive defendants' initial disclosures? The Case Management And Pretrial Order states that the parties shall exchange initial disclosures by November 16, 2007.

Thanks,
Constantin